

Questions and Answers relating to the Credit for Producing Synthetic Fuel from Coal under I.R.C. § 29

- (1) Ordinarily, taxpayers may rely on private letter rulings received from the Service. I received a private letter ruling concluding that the process used in my facility produced a qualified fuel within the meaning of section 29(c)(1)(C). Why are the credits resulting from the fuel produced and sold from this facility being examined?**

While the purpose of a private letter ruling is to provide certainty, it is important to realize that private letter rulings depend on the validity of the facts and representations submitted with the ruling requests. Section 12.01 of Rev. Proc. 2003-1, 2003-1 I. R. B. 1, 43, provides that a taxpayer ordinarily may rely on a letter ruling received from the Service subject to the conditions and limitations described in section 12. Factual determinations, however, are not made by the legal office that issues the rulings. Instead, when examining a taxpayer with a private letter ruling, Service examiners must ascertain that the conclusions stated in the ruling are properly reflected in the return, the representations upon which the ruling was based reflected an accurate statement of the controlling facts, the transaction was carried out substantially as proposed in the request for ruling, and there has not been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated. See section 12.03 of Rev. Proc. 2003-1.

- (2) Why has the Service suspended rulings that a solid fuel (other than coke) produced from coal is a qualified fuel under I.R.C. § 29(c)(1)(C)?**

It has been the practice of the Service to issue private letter rulings that a solid fuel (other than coke) produced from coal is a qualified fuel under I.R.C. § 29(c)(1)(C) if the conditions contained in Rev. Proc. 2001-30, 2001-30 C.B. 1163, as modified by Rev. Proc. 2001-34, 2001-1 C.B. 1293 are met and evidence is presented that all, or substantially all, of the coal used as feedstock undergoes a significant chemical change. The evidence presented to establish that all, or substantially all, of the coal undergoes a significant chemical change typically includes expert reports with test results reflecting that the taxpayer's processes result in a significant chemical change.

As a result of examination activity attempting to verify the facts and representations upon which certain rulings in this area were based, the Service has become concerned about the scientific validity of the test procedures and the results of those tests presented as evidence that the coal underwent a significant chemical change. The Service continues to study this area.

The Service has determined that, until its review of these test procedures and results is complete, it is appropriate to suspend rulings on the question of significant chemical change where the ruling request relies on test procedures and results that are being reviewed. Taxpayers may request a letter ruling pre-submission conference to

determine if a ruling request relies on test procedures and results that are being reviewed by the Service. See Announcement 2003-46, 2003-30 I.R.B. 222.

(3) During three separate periods in the past, the Service has paused from making private letter rulings concerning the question of whether a process resulted in a qualified fuel from coal. As recently as in 2000, the Service received comments concerning (1) the standard to be applied in determining whether fuel produced from coal is a solid synthetic fuel, (2) whether significant chemical change is an appropriate test and, (3) if so, what constitutes such a change. At the conclusion of that pause, the Service issued revenue procedures that set forth the methodologies that produce a qualified fuel. Does this latest pause signal a reconsideration of the Service's position in those revenue procedures?

No. While Rev. Proc. 2001-30 as modified by Rev. Proc. 2001-34 discusses what is necessary to receive a private letter ruling concerning the production of solid synthetic fuel from coal, both revenue procedures require the coal to have undergone a significant chemical change. Using a method described in these revenue procedures does not, by itself, qualify the treated coal as synthetic fuel. The current pause in the private letter ruling process is not intended to reconsider the methodologies contained in Rev. Proc. 2001-30 as modified by Rev. Proc. 2001-34. The current pause is to consider concerns over the scientific validity of test procedures and results that have been presented as evidence that the coal feedstock undergoes a significant chemical change. Rev. Proc. 2001-30 as modified by Rev. Proc. 2003-34 requires that the taxpayer present evidence that the coal feedstock undergoes a significant chemical change. This must be supported by verifiable evidence of the significant chemical change that provided the basis for the private letter ruling.

(4) In the past, the Service has accepted the tests used in the private letter ruling submissions. Does the concern in this area mean that the Service is considering different tests for significant chemical change?

No. In determining if the representations upon which the ruling was based reflect an accurate statement of the controlling facts, Service experts will use the same tests, primarily FTIR (Fourier Transform Infrared) spectrometry and TGA (Thermogravimetric Analysis), using scientifically accepted and recognized protocols, in an effort to replicate the claimed significant chemical change. In cases where the claimed significant chemical change cannot be reproduced, Service experts may proceed with confirmation testing to try to explain why the results were not replicated.

(5) How long will the examination and testing process take?

The duration of the examination and testing process depends on several factors, including the scope of the examination determined for the particular case, the relevant facts and circumstances associated with the case or issues, and the degree of taxpayer cooperation in providing the requisite information necessary for the examination

process. With regard to any testing to validate a significant chemical change, the Service currently anticipates preliminary test results within 60 days from receipt of samples and a final report from the experts within 90 days of receipt of samples.

(6) What are the Service's specific concerns with regard to the scientific validity referenced in Announcement 2003-46?

The Service's concerns are based on the inability of its experts to reproduce the results described in ruling requests. These concerns involve factual questions raised in the context of an audit.

(7) What tests will the Service experts perform to determine if the process used at my facility results in a significant chemical change to the feedstock coal?

In attempting to verify the evidence of chemical change presented in the requests for private letter rulings, Service experts will try to replicate the results of the taxpayer's studies using the same tests the taxpayer's experts used, primarily FTIR (Fourier Transform Infrared) spectrometry and TGA (Thermogravimetric Analysis), using scientifically accepted and recognized protocols. See also Question and Answer 4.